

Double Shell Closure with Support Ribs
Serial No.: 09/876,336
Any. Docket #: CG- 838

REMARKS

Reconsideration of the pending application is respectfully requested. Claims 22-24, 26-33 and 35-42 remain in the present application. Please cancel claims 25 and 34. Applicant's attorney has reviewed the Examiner's Response to Applicant's Arguments. However, Applicant's attorney respectfully point's out to the Examiner that MPEP § 2143.01 states "if a proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification." *In Re Gorman*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984). Moreover, MPEP 2143.01 further states that "the mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination." *In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990). In other words, although various elements may exist separately an Examiner cannot combine references, and therefore those elements, if the combination is unsatisfactory for the reference's intended purpose and unless the prior art suggests some desirability to make such a combination.

35 U.S.C. §112 Rejection of Claim 25

The Examiner has rejected claim 25, under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicant's attorney has canceled claim 25 rendering the Examiner's rejection as moot. Applicant's attorney respectfully requests this ground of rejection

Double Shell Closure with Support Ribs
Serial No.: 09/876,336
Atty. Docket #: CG- 838

removed.

35 U.S.C. §102(b) Rejection of Claims 32 and 34

The Examiner has rejected claims 32 and 34 under 35 U.S.C. §102(b) as being anticipated by Elkner (the '827 patent). Applicant's attorney has amended claim 32 rendering said ground of rejection moot.

The Examiner alleges that the '827 patent teaches a closure having a top, first and outer skirts, thread on the inner skirt, and ribs as claimed. However, the '827 patent further teaches an outer skirt having an axial dimension which is shorter than the inner dimension, as clearly shown in Figures 1 and 3.

"A claim is anticipated only if each and every element in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the . . . claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

Applicant's attorney has amended claim 32 to include the limitation the outer skirt having a larger axial dimension than the inner skirt. In addition, claim 32 now includes the limitation the rib being opposite an outer skirt rib extending along an outer surface of the outer skirt. The '827 patent fails to teach or suggest the amended claim limitations. Applicant's attorney asserts that the present amendment places the claim in condition for allowance and respectfully requests this ground of rejection removed.

The Examiner has rejected claim 34, however claim 24 has been canceled. Applicant's

Double Shell Closure with Support Ribs
Serial No.: 09/876,336
Any. Docket #: CG- 838

attorney respectfully requests this ground of rejection be withdrawn.

35 U.S.C. §102(b) Rejection of Claim 32

The Examiner has rejected claims 32 and 34 under 35 U.S.C. §102(b) as being anticipated by Robinson (the '576 patent). Applicant's attorney has amended claim 32 rendering said ground of rejection moot.

The Examiner alleges that the '576 patent teaches a container closure with a top with first and second concentric skirts depending from the top, and at least one rib 82,84 and a thread on the inner skirt.

The '576 patent shows ribs (80-86) extending radially from the inner skirt toward the outer skirt but not connected thereto. See Figure 5. Instead the ribs are connected to thickened portions 100 and 102 extending from the outer skirt. This orientation serves two functions: first, it reduces the moment arm of squeeze pads and second it moves the swing point of the closure from the inside top wall to lowest point of connection between the ribs and the thickened portion. See Col. 7, line 60 – Col. 8, line 8. However, the '576 patent fails to show ribs extending from an innermost to an outermost skirt. Additionally, the '576 patent also fails to teach or suggest outer skirt ribs opposite the ribs extending from the innermost to the outermost skirt.

Applicant's attorney has amended claim 32 of the instant application to include the limitation the ribs extend from an innermost to an outermost skirt. The claim also states each of the plurality of ribs being opposite an outer skirt rib positioned on said outer surface of said outermost skirt. The outer skirt ribs provide structural rigidity for the closure as well as aiding in gripping the closure. In addition, the pending application claims said plurality of ribs having a

Double Shell Closure with Support Ribs
Serial No.: 09/876,336
Atty. Docket #: CG- 838

first edge along a first skirt and a second edge along a second skirt, said first edge being shorter than said second edge. The '576 patent fails to teach or suggest limitations as currently amended. Therefore, Applicant's attorney asserts that claim 32 is in condition for allowance and respectfully requests this ground of rejection be withdrawn.

35 U.S.C. §103(a) Rejection of Claims 28, 33, 36, and 37

The Examiner has rejected claims 28, 33, 36, and 37 under 35 U.S.C. §103(a) as being unpatentable over Robinson (the '576 patent) in view of either Miller ('the '057 patent) or Abbott (the '862 patent).

The Examiner alleges that the '576 patent meets all claimed limitations except for the outer skirt having a frusto-conical configuration. The Examiner further alleges that Abbott or Miller disclose an outer wall of a closure with a frusto-conical configuration. MPEP 2142 states:

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

Applicant's attorney asserts that the Examiner has not made a *prima facie* showing of obviousness since the Examiner has not shown all of the elements of the claimed invention. Applicant's attorney has amended claims 28, 32, and 37 to more clearly define the patentable subject matter. As currently amended, claims 28, 32, and 37 now include the claim limitation the at least one rib being opposite an outer skirt rib positioned on said outer surface of said outermost skirt. In

Double Shell Closure with Support Ribs
Serial No.: 09/876,336
Any. Docket #: CG- 838

addition the claim states that the rib extends from the inner most to the outermost skirt. The Robinson, Abbott, or Miller references fail to teach this amended limitation either alone or in combination. Thus, Applicant's attorney asserts that the Examiner has not made a prima facie showing of obviousness and respectfully requests this ground of rejection be withdrawn.

35 U.S.C. §103(a) Rejection of Claim 34

The Examiner has rejected claims 28, 33, 36, and 37 under 35 U.S.C. § 103(a) as being unpatentable over Robinson (the '576 patent) in view of Le Brun, Jr. (the '708 patent). Applicant's attorney has canceled claim 34 rendering this ground of rejection moot and respectfully requests this ground of rejection withdrawn.

35 U.S.C. §103(a) Rejection of Claim 35

The Examiner has rejected claim 35 under 35 U.S.C. § 103 as being unpatentable over Robinson (the '576 patent) in view of Marques et al. (the '130 patent). Applicant's attorney has amended claim 32, from which claim 35 depends, rendering this ground of rejection moot.

The Examiner alleges that the '576 patent meets all claimed limitations except for the closure having a flange and further that it would have been obvious to provide the flange (44) of the '130 patent as in order to provide a better seal.

The '130 patent issued to Marques et al. teaches a closure for a container. The closure has an outer skirt and an inner skirt with teeth extending inwardly from the outer skirt for engaging locking teeth of the container neck. The '130 patent further discloses a seal depending from the closure top wall and engaging the inner surface of the container neck.

The '576 patent teaches a closures having ribs (80-86) extending between outer and inner

Double Shell Closure with Support Ribs
Serial No.: 09/876,336
Atty. Docket #: CG- 838

skirts. However, the ribs of the '576 do not fully extend from the inner skirt to the outer skirt, as clearly shown in Figure 5. Instead, the ribs (80-84) are connected to thickened portions (100, 102) in order to shorten an effective moment arm of squeeze pads (90,92). This moves the swing point of the closure from the inside top wall downward to the lowest point of connection between the ribs and the thickened portion. See Col. 7, lin. 60 to Col. 8, lin. 8.

Claim 32, as currently amended, claims a plurality of ribs extending between an innermost skirt and an outermost skirt as well as an outer skirt rib opposite each of said plurality of ribs extending along an outer face of said outer skirt. The instant invention provides a rigid structure and inhibits permanent deflection associated with removal of double wall closures from a mold. The '130 patent fails to teach or suggest such an arrangement of structures. As previously discussed, the '576 patent also fails to teach or suggest such a limitation either alone or in combination with the '130 patent and therefore the Examiner has not made a prima facie showing of obviousness. Applicant's attorney asserts that claim 32 is believed to be allowable.

Applicant's attorney has amended claim 32 from which claim 35 depends. Claim 35 as amended includes all of the limitations of claim 32 and therefore is asserted to be in condition for allowance. Applicant's attorney respectfully requests the Examiner withdraw this ground of rejection.

35 U.S.C. §103(a) Rejection of Claims 22-26, 29-31, and 38-40

The Examiner has rejected claims 22-26, 29-31, and 38-40 under 35 U.S.C. § 103(a) as being unpatentable over Robinson in view of Le Brun, Jr. Applicant's attorney has amended independent claims 22, 28, and 27 rendering this ground of rejection moot.

Double Shell Closure with Support Ribs
Serial No.: 09/876,336
Any. Docket #: CG- 838

The Examiner alleges that the '576 patent meets all the claim limitations except for the first portion extending the length of the inner skirt and the second portion extending the length of the outer skirt. The Examiner further alleges that the '708 patent teaches ribs 117 with a first portion extending the length of the inner skirt and a second portion extending the length of the outer skirt and therefore it would have been obvious to modify the ribs of Robinson as taught by the '708 patent to provide the desired support.

Applicant's attorney asserts the Examiner has failed to make a prima facie showing of obviousness since not all of the elements of the claimed invention are taught or suggested, either alone or in combination, by the prior art reference cited.

The '708 patent teaches a closure having three skirts wherein the ribs do not extend from the innermost skirt to the outermost skirt. Instead the ribs extend from the outer skirt to the middle skirt in order that when the outer skirt is squeezed, the middle skirt deflects to overcome a child resistant feature. The '576 patent teaches ribs (80-86) extending radially from the inner skirt toward the outer skirt but not connected thereto. See Figure 5. Instead the ribs are connected to thickened portions 100 and 102 extending from the outer skirt. This orientation serves two functions: first, it reduces the moment arm of squeeze pads and second it moves the swing point of the closure from the inside top wall to lowest point of connection between the ribs and the thickened portion. See Col. 7, line 60 – Col. 8, line 8. Thus the '576 patent fails to show ribs extending from an innermost to an outermost skirt. Neither the '708 patent nor the '576 patent, either alone or in combination, teach a rib extending from the innermost skirt to the outermost skirt.

Double Shell Closure with Support Ribs
Serial No.: 09/876,336
Atty. Docket #: CG- 838

The Examiner has failed to make a prima facie showing since not all of the limitations of the pending claims are taught or suggested by the cited prior art references. Applicant's attorney has amended claims 22, 28, and 37 to include the limitation a plurality of ribs extending between the innermost and outermost skirts. The claims further include the limitation each of the plurality of ribs being opposite an outer skirt rib extending along an outer face of the outermost skirt. The pending claims are not taught or suggested by the Examiner's cited references either alone or in combination and therefore Applicant's attorney asserts that these claims are in condition for allowance.

Moreover, to the extent the Examiner alleges that Robinson and Le Brun may be combined to teach a rib fully extending from an inner to an outer skirt, Applicant's attorney asserts this is an improper combination since there is no suggestion or motivation to make the Examiner's cited combination. Applicant's attorney refers the Examiner to MPEP 2143.01 which states:

If proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification.

The '708 patent teaches away from the arrangement and function taught by the '576 patent and therefore would render it unsatisfactory for its intended purpose. By connecting the inner and outer skirts with ribs, the functionality of the Le Brun device would be lost since the structure would be rendered too rigid to flex. Such a combination teaches away from the function of the '708 patent since the Robinson and Le Brun devices differ necessarily to function differently. Therefore there is no suggestion to combine and this is an improper combination.

Double Shell Closure with Support Ribs
Serial No.: 09/876,336
Atty. Docket #: CG- 838

In addition, claims 23-26, 29-31, and 38-40 depend from claims 22, 28, and 37 and therefore include the limitations of those presently pending claims. Applicant's attorney believes that claims 22, 28, and 37 are currently in condition for allowance and respectfully asserts that the dependent claims 23-26, 29-31, and 38-40 are also allowable. Applicant's attorney respectfully requests this ground of rejection withdrawn.

35 U.S.C. §103(a) Rejection of Claims 41 and 42

The Examiner has rejected claims 41 and 42 under 35 U.S.C. § 103(a) as being unpatentable over Robinson (the '576 patent) in view of Marques et al. (the '130 patent). Applicant's attorney has amended claim 37, from which claims 41 and 42 depend, rendering this ground of rejection moot.

The Examiner alleges that the '576 patent meets all of the limitations of claims 41 and 42 except for a closure having a flange. The Examiner further alleges that the '130 patent teaches a closure having a flange 44 and therefore it would have been obvious to one skilled in the art to provide a flange to the '576 patent to provide a better seal.

The instant invention provides a double wall closure having ribs which extend between the outermost and innermost skirts providing a rigid structure and which are intended to inhibit permanent deflection associated with removal of double wall closures from a mold. Moreover the claimed design provides an outer skirt rib opposite each rib extending between the innermost and outermost skirts.

As previously discussed, the '130 patent issued to Marques et al. teaches a closure for a container having an inner skirt and an outer skirt with teeth extending inwardly from the outer

Double Shell Closure with Support Ribs
Serial No.: 09/876,336
Atty. Docket #: CG- 838

skirt for engaging locking teeth of the container neck. The '130 patent further discloses a seal depending from the closure top wall and engaging the inner surface of the container neck.

The '576 patent teaches a closures having ribs (80-86) extending between outer and inner skirts. However, the ribs of the '576 do not fully extend from the inner skirt to the outer skirt, as clearly shown in Figure 5. Instead, the ribs (80-84) are connected to thickened portions (100, 102) in order to shorten an effective moment arm of squeeze pads (90,92). This moves the swing point of the closure from the inside top wall downward to the lowest point of connection between the ribs and the thickened portion. See Col. 7, lin. 60 to Col. 8, lin. 8.

However, the Examiner has failed to make a prima facie showing of obviousness since the cited combination does not show all the elements of the pending claim. The Examiner's cited combination fails to provide a plurality of outer rib skirts each being opposite the plurality of ribs extending between the inner and outer skirts. Moreover the cited combination does not provide a plurality of ribs extending from the innermost to the outermost skirt. Applicant's attorney has amended claim 37 from which dependent claims 41 and 42 depend. Since claim 37 is asserted to be allowable claims 41 and 42 are also believed to be in condition for allowance. Applicant's attorney respectfully requests this ground of rejection be withdrawn.

35 U.S.C. §103(a) Rejection of Claim 27

The Examiner has rejected claim 27 under 35 U.S.C. § 103(a) as being unpatentable over Robinson in view of Marques et al. Applicant's attorney has amended claim 22 from which claim 27 depends rendering this ground of rejection moot.

As previously argued, claim 22 has been amended and is believed to be in condition for

Double Shell Closure with Support Ribs
Serial No.: 09/876,336
Any. Docket #: CG- 838

allowance. Claim 27 depends from claim 22 and therefore includes all of the presently amended limitations of claim 22. Since claim 22 is asserted to be in condition for allowance, claim 27 is also believed to be in condition for allowance. Applicant's attorney respectfully requests this ground of rejection be withdrawn.

35 U.S.C. § 103(a) Rejection of Claims 28-34

The Examiner has rejected claims 28-34 under 35 U.S.C. § 103(a) as being unpatentable over Landen (the '101 patent) in view of Earls and further in view of Le Brun, Jr (the '708 patent). Applicant's attorney has amended claim 28 and 32 rendering this ground of rejection moot.

The Examiner alleges that the '101 patent teaches all of the limitations of claims 28 and 32 except for the ribs. The Examiner further alleges that it would have been obvious to combine the ribs of the '708 patent to Landen. The Examiner also alleges that it would have been obvious to provide ribs between the skirts as taught by Earls to provide structural support.

The instant invention provides a double wall closure having ribs which extend between the outermost and innermost skirts providing a rigid structure and which are intended to inhibit permanent deflection associated with removal of double wall closures from a mold. Moreover the claimed design provides an outer skirt rib opposite each rib extending between the innermost and outermost skirts.

To the contrary, there is no motivation to combine the Earls reference and the '708 patent. As previously discussed, the '708 patent teaches a triple wall closure having a rib extending from an outer skirt toward a middle skirt. However, the '708 patent also teaches a rib which does

Double Shell Closure with Support Ribs
Serial No.: 09/876,336
Atty. Docket #: CG- 838

not connect the two skirts so that when the outer skirt is deflected the middle skirt is also deflected to overcome the child resistant feature. To the contrary, if the outer and middle skirt were connected by the rib, as suggested by the Examiner, the structure would be too rigid to allow for such a deflection. Moreover, the Examiner admits that Earls teaches ribs between the skirts in order to provide structural support. Regarding Landen applicant's attorney asserts that the Landen teaches a flexible outer skirt in order to disengage the locking ratchets or teeth on a cooperating container neck. However, adding ribs to such a structure would only stiffen the closure inhibiting its flexibility and therefore intended use. As such, there is no suggestion or motivation to make the Examiner's cited combination.

Nevertheless, Applicant's attorney has amended claims 28 and 32 to include the limitations the rib extending from the innermost skirt to the outermost skirt. In addition, Applicant's attorney has further amended claims 28 and 32 to include the limitation the ribs being opposite to an outer skirt rib extending along the outer surface of the outermost skirt. Applicant's attorney asserts that claims 28 and 32 are in condition for allowance and that claims 29-31 and 33-34 depend from claims 28 and 32 and therefore include the limitations of claim 28 and 32. As such, Applicant's attorney asserts claims 28-34 are allowable and respectfully requests this ground of rejection withdrawn.

35 U.S.C. § 103(a) Rejection of Claims 22-26, 36, and 36-40

The Examiner has rejected claims 22-26, 36, and 37-40 under 35 U.S.C. § 103(a) as being unpatentable over Landen in view of either Miller or Abbott. Applicant's attorney has amended claims 22, 32, and 37, from which the rejected claims depend, rendering this ground of rejection

Double Shell Closure with Support Ribs
Serial No.: 09/876,336
Atty. Docket #: CG- 838

moot.

The Examiner alleges that Landen meets all the claimed limitations except for the closure having a frusto-conical shape, and that Miller or Abbott both teach that it is known to provide a closure having a frusto-conical shape.

To the contrary, Landen fails to provide a plurality of ribs extending between the outermost skirt and the innermost skirt as previously admitted by the Examiner. Rejection 10 of Examiner's pending office action states "Landen meets all claimed limitations except for the ribs." Since the Examiner has failed to provide all of the elements of the pending claims, the Examiner has failed to make a prima facie case of obviousness. Moreover, Applicant's attorney has amended the pending claims to include limitations previously described and asserts the claims to be in condition for allowance. Applicant's attorney respectfully requests this ground of rejection withdrawn.

35 U.S.C. § 103(a) Rejection of Claims 27, 35, 41, and 42

The Examiner has rejected claims 27, 35, 41 and 42 under 35 U.S.C. § 103(a) as being unpatentable over Landen in view of Marques et al. Applicant's attorney has amended claims 22, 32 and 37 rendering this ground of rejection moot.

The Examiner states that the rejected claims are unpatentable over Landen in view of Marques et al. However the Examiner then discusses Robinson in view of Marques et al. Applicant's attorney is confused as to which combination of references the Examiner directs in his rejection. For purpose of this response, Applicant's attorney will assume that the Examiner is referring to the first stated rejection of Landen in view of Marques et al.

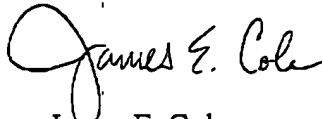
Double Shell Closure with Support Ribs
Serial No.: 09/876.336
Atty. Docket #: CG- 838

As previously argued, the Landen et al. reference teaches a closure having a plurality of ribs depending from a lower surface of the closure skirt. The Landen reference, however, fails to provide a plurality of ribs extending between the outer skirt and inner skirt. Marques et al. does not aid this lack of disclosure but instead teaches a double wall closure having ribs 30 extending radially inward from the outer wall of the closure. The ribs engage a plurality of teeth located on the container neck. However, the ribs do not extend from the outer wall to the inner wall as currently claimed in the pending application. In addition, Landen and Marques et al. do not provide an outer skirt rib opposite the ribs located between the outermost and innermost skirt. The Examiner has not made a prima facie showing of obviousness since the cited references fail to provide all of the elements of the currently pending application. Thus, Applicant's attorney asserts that claims 27, 35, 41, and 42 are allowable and respectfully requests this ground of rejection be withdrawn.

Conclusion

Applicant urges that the instant application is in condition for allowance. However, if the Examiner believes there are other unresolved issues in this case, Applicant's attorney of record would appreciate a collect call at (502) 584-1135 to discuss such remaining issues.

Respectfully submitted,



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